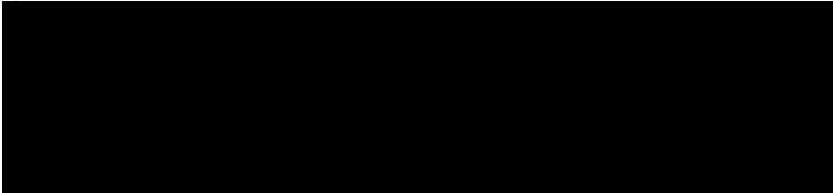


C-1

U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



FILE:



Office: TEXAS SERVICE CENTER

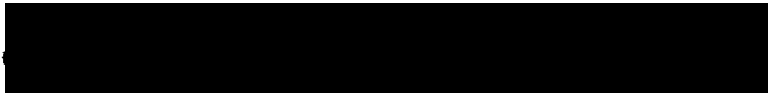
Date:

JUL 18 2006

IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

Identifying information must be  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a Bible teacher. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a Bible teacher immediately preceding the filing date of the petition. In addition, the director questioned the nature of the position offered to the beneficiary. The director found that the petitioner had not established its ability to pay the beneficiary's proffered wage, or that the beneficiary entered the United States intending to work as a religious worker.

On appeal, the petitioner submits financial documents and arguments from counsel.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

In this proceeding, the issues of qualifying experience and the beneficiary's occupation are somewhat related, so we will address them together. The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on March 21, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a Bible teacher throughout the two years immediately prior to that date.

The petitioner must also establish that it seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines a "religious occupation" as an activity which relates to a traditional

religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation at 8 C.F.R. § 204.5(m)(2) states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In a January 4, 2003 letter accompanying the petition, the petitioner's pastor [REDACTED] offers the beneficiary "a full time position with our church as a Bible Teacher," at an "annual salary of \$18,000.00 plus travel expenses for your automobile, meals and over night lodging when required."

Among her duties, the petitioner is to "assist the Pastor in the recruitment and retention of the Church congregation, teach the bible to the congregation by planning and conducting bible study sessions and Bible Reading Retreats . . . accompany the Pastor in home visits . . . and all Hospital visits as necessary . . . assist in the spiritual guidance and religious instruction of the Church's congregation . . . [and] coordinate and supervise the Weekly Sunday School classes of our youth." The petitioner has since submitted a copy of what purports to be an earlier letter, from August 4, 2002, offering the beneficiary a position as an evangelist. The salary is the same, as are the duties, with the addition of "assisting in the Preparation of the weekly sermon."

Counsel states that the beneficiary "has been serving as the Church's Bible Teacher since 2000," and that the beneficiary performed the same function at other churches from 1983 to 1999. Certificates affirm the beneficiary's employment in Korea prior to 1999, which falls outside the qualifying period. With regard to the beneficiary's work for the petitioning church, the petitioner has submitted statements from Jyung Ho Oh, indicating that the petitioner paid the beneficiary increasing amounts from June 1, 2000 through the date of filing. The petitioner has submitted copies of canceled checks paid to the beneficiary, but the earliest of these checks is dated August 2002.

The petitioner has subsequently submitted copies of the beneficiary's income tax returns. The beneficiary reported \$4,200 in gross income in 2001 and \$10,000 in 2002. The petitioner has also submitted copies of canceled checks, always issued in the amount of \$351.19, issued to the beneficiary between July 2002 and April 2003. Given that every paycheck shown to have been issued to the beneficiary is in the amount of \$351.19, it is not clear how the beneficiary's total earnings have been such round numbers. Twelve weeks at the beneficiary's weekly salary rate would equal \$4,214.28; 29 weeks at the same rate would equal

\$10,184.51. The petitioner's tax returns, therefore, are not consistent with full-time, year-round employment at \$351.19 per week, nor are they consistent with the petitioner's stated offer of \$18,000 per year plus reimbursement for expenses. The petitioner has not explained the discrepancy between the beneficiary's promised wages and what she appears to have actually received.

A further discussion of the beneficiary's remuneration appears elsewhere in this decision, in the context of the petitioner's ability to pay the beneficiary's salary. The above discussion of the beneficiary's remuneration is relevant to the issue of past experience because, if the beneficiary was working throughout the qualifying period, under a valid R-1 visa as claimed, then the petitioner can be expected to have paid her throughout that same period.

Counsel states that, as a Bible teacher, the beneficiary "plans and coordinates Bible study sessions and Bible reading retreats. She also assists in the spiritual guidance and religious instruction of the Church's congregation." A list in the record shows that the church has 79 adult members and 31 children. A schedule indicates that the beneficiary works between 38 and 47 hours per week.

In response to the director's request for more details about the beneficiary's work, Rev. Oh states:

Beneficiary assist[s] the Pastor in the preparation of the weekly sermon. This requires research of Theology references and constructing an outline of the subject matter at hand. Makes visits with the pastor to new Korean residents of the Montgomery area to welcome them and offer the services of the church. Conducts research and prepares training outlines for the children and adult bible study classes. Implements the training outlines and conducts the bible classes and seminars in accordance with the practices of the Presbyterian Church. Accompanies the Pastor in home visits of the elderly and disabled, to include hospital visits of the sick as needed.

adds that the position requires "at least 2 years of specialized training in Theology and related studies with Bible Teaching as a major." A 1998 diploma, submitted previously, shows that the beneficiary was certified as a Bible teacher following study at the Teacher College of Evangelical Holiness Church in Korea.

The director, in denying the petition, observed that the petitioner has issued two different job offer letters to the beneficiary, one for an evangelist and one for a Bible teacher. The director stated "[i]t cannot be determined that the beneficiary was employed professionally in the same capacity as the proffered position since the petitioner has offer[ed] two different jobs." On appeal, counsel states "the reference to Evangelist was an error as the beneficiary has been and continues to be a Bible Teacher." Given that Rev. Oh had previously indicated that the beneficiary was the only employee of the church, other than the pastor, it is not clear why the pastor would be unclear as to the beneficiary's job title. The record contains a treasurer's report, referring to the position of "Evangelist/Bible Teacher," which only adds to the confusion.

The confusion regarding the beneficiary's job title is diminished somewhat by the correct observation that the two job offer letters contain largely identical descriptions of the duties the beneficiary performs. Because the two job descriptions are essentially in agreement, the specific title attached to the position is of relatively little concern. There remains, however, the question of whether the beneficiary worked continuously (i.e., full-time and without significant interruption) for the petitioner throughout the two-year qualifying period. In this regard, as noted above, the evidence is at best fragmentary, and at worst contradictory.

As to whether the beneficiary's position qualifies as a religious occupation, the petitioner has demonstrated that the beneficiary has specialized religious education, and has served for several years as a Bible teacher. On the other hand, the evidence does not demonstrate that the beneficiary's work has been and will continue to be (1) paid or (2) full-time. The certificates from Korea do not indicate that she was paid or that her activities as a Bible teacher represented her career or livelihood; the documents only state that she "served" during specified dates. These ambiguous documents do not establish that Korean Presbyterian churches routinely employ paid, full-time Bible teachers rather than relying on the free services of volunteers from the congregation.

Also, the petitioner has not satisfactorily demonstrated that a congregation that consists of barely one hundred members on a given Sunday (according to [REDACTED] figures) would have a continuing need for the full-time services of a Bible teacher (or evangelist) to perform the duties described in the record.

The next issue concerns the petitioner's financial status. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Some documents indicate that the petitioner pays the beneficiary "\$18,000.00 plus travel expenses." Other documents indicate that the beneficiary earns a salary of \$10,000, plus reimbursement for various expenses, totaling roughly \$18,000 per year. The petitioner has submitted a treasurer's report for 2002 that indicates the "evangelist/Bible teacher" received a salary of \$10,000 and allowances for housing, utilities, and transportation, totaling \$8,500. The preliminary 2003 report indicates that the petitioner has budgeted \$10,000 for the evangelist/Bible teacher's salary, and an additional \$9,322 for the allowances listed above.

In a separate document, [REDACTED] states that in 2001, the beneficiary received a \$4,200 housing allowance, \$1,400 automobile allowance, and \$2,800 for food and other expenses, for a total of \$8,400. The beneficiary, however, claimed only half that much on her 2001 tax return. [REDACTED] indicates that, in 2002, the beneficiary received a salary of \$10,000, \$5,000 for housing, \$1,800 for utilities, and a \$1,700 automobile allowance, totaling \$18,500. Again, the beneficiary's 2002 tax return arguably reflects the \$10,000 salary, but none of the other reimbursements that would qualify as income because they reflect payment of the beneficiary's personal expenses. Indeed, [REDACTED] refers to these reimbursements as "income." Rather than report these additional reimbursements on her tax returns, the beneficiary has *deducted* expenses from the smaller amounts reported on both years' tax returns, although it is not clear what expenses the beneficiary has incurred that would not have been covered by the unreported reimbursements.

Copies of several months of canceled paychecks show that the beneficiary received \$351.19 per week, which would annualize to \$18,261.88, assuming the beneficiary is paid the same amount every week. As noted above, the earliest checks are dated August 2002. Bank statements dated prior to August 2002 do not reflect any checks in the amount of \$351.19. The petitioner has submitted checks dated between August and November 2002 and February and March 2003, but no evidence of payments at other times.

The petitioner also submits a copy of a balance sheet, dated December 2002, indicating that the petitioner's current assets amount to \$3,898.60 in cash, offset by \$2,777.44 in accounts payable. The balance sheet indicates that the petitioner paid \$66,759.79 in salaries in 2002, but there is no itemized breakdown showing how much of this amount comprised the beneficiary's compensation.

The petitioner has clearly been paying the beneficiary, but the record is ambiguous and inconsistent about the amount of those payments. The record does not credibly support the assertion that the beneficiary has received at least \$18,000 per year from the petitioner.

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, *audited* financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only *in addition to*, rather than *in place of*, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The petitioner has submitted other documents, such as bank statements and an *unaudited* financial compilation report, but none of the evidence required by the regulation. Because the documented payments to the beneficiary do not match the proffered wage, we cannot accept the argument that those payments represent proof of the petitioner's ability to pay.

The final issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii)(III) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(III), requires that the alien seeking classification "seeks to enter the United States" for the purpose of carrying on a religious vocation or religious occupation. In this instance, because the beneficiary initially entered the United States under a B-1 nonimmigrant visa, the director concluded that the beneficiary did not enter the United States for the purpose of working as a Bible teacher.

This finding is not defensible. The AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry *as an immigrant*, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "*seeks to enter*," which describes the entry as a future act. We therefore withdraw this particular finding by the director.

We note that the petitioner, through counsel, filed the appeal on July 18, 2003. Counsel gave no indication that any supplementary brief or evidence would be forthcoming, nor did counsel provide good cause for an extension to allow such a submission, as required by 8 C.F.R. § 103.3(a)(2)(vii). Nine months later, on April 19, 2004, counsel has submitted a new brief and documents (largely copies of previously submitted documents), with no explanation as to what delayed their submission for the better part of a year. Because counsel did not, in advance, provide good cause for the late submission of this brief and documentation, we are not obliged to consider that submission here.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.